

(23,092)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 576.

P. L. ROGERS, PLAINTIFF IN ERROR,

vs.

THE STATE OF ARKANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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1

Caption.

Pleas before Hon. W. J. Driver, Regular Judge of Greene Circuit Court, on December 5, 1911.

No. 1646.

STATE OF ARKANSAS (Plaintiff), Appellee,

VS.

P. L. ROGERS (Defendant), Appellant.

Prosecution for Failure to Secure Peddler's License.

2

Information.

In the Justice of the Peace Court of Clark Township, Greene County, Arkansas.

Before J. W. Thompson, J. P.

Information.

Comes Jeff Bratton, Deputy Prosecuting Attorney of Greene County, Arkansas and states to the court that he has reasons to believe that P. L. Rogers did in the State of Arkansas and County of Greene on or about the 15th day of October, 1911, commit the crime of peddling or selling buggies and carriages in Greene County without first having paid the license or privilege tax as required by law, and prays a warrant of arrest from J. W. Thompson, a Justice of the Peace, that said P. L. Rogers may be arrested and brought before said Justice to be dealt with according to law.

JEFF BRATTON,

Deputy Prosecuting Attorney.

3

Trial and Judgment, J. P. Court.

In the Justice of the Peace Court of Clark Township.

Before J. W. Thompson, J. P.

STATE OF ARKANSAS

VS.

P. L. ROGERS.

On October the 21st day of October 1911 comes Jeff Bratton Deputy Prosecuting Attorney and files before me information charging that P. L. Rogers did in the County of Greene and State of Arkansas on or about the 15th day of October 1911 commit the

crime of traveling over Greene County, Arkansas, and selling or peddling buggies without license; Whereupon a warrant of arrest was issued and placed in the hands of the Constable of Clark Township October the 21st, 1911; On this day comes the defendant in charge of said constable and not being ready for trial of this cause trial was set for Oct. 24th, and it was ordered that the defendant enter into a \$500 bond for his appearance.

This cause is continued by consent and set for October the 27th at ten o'clock.

J. W. THOMPSON, J. P.

October the 27th this cause coming on for trial the defendant appeared in person and the State appeared by Jeff Bratton Deputy Prosecuting Attorney, all parties announce ready for trial, the defendant entered a plea of not guilty: the court sitting as a jury heard all the evidence and the law and found the defendant guilty and assessed his fine at Two Hundred Dollars, \$200.00, and all cost.

It is therefore by the court considered ordered and adjudged that the defendant P. L. Rodgers pay to the State of Arkansas for the use and benefit of Greene County a fine of Two Hundred
4 Dollars and all cost and that he be remanded to the custody of the Constable of Greene County until said fine and cost is fully paid and upon his default of the payment of the same that he be imprisoned in the Greene County Jail until said fine and cost is fully paid at seventy five cents per day.

Given under my hand October the 27th, 1911.

J. W. THOMPSON, J. P.

5

Costs, J. P. Court.

Accrued cost:

J. W. Thompson.....	\$3.80
R. F. Clark, Constable.....	3.45
Jeff Bratton, Deputy Pros. Att'y.....	10.00

STATE OF ARKANSAS,

County of Greene, Clark Township:

I hereby certify that the above and foregoing is a true and perfect transcript of the proceedings together with all the papers in the above entitled case as shown by my docket.

Given under my hand this the 30th day of October, 1911.

J. W. THOMPSON, J. P.

6

Bail Bond, J. P. Court.

Bail Bond.

STATE OF ARKANSAS,

Greene County:

P. L. Rogers being in custody, charged with the offense of peddling buggies without obtaining license and being permitted to give

bail in the sum of Five Hundred Dollars, now we, hereby undertake that the above named P. L. Rogers shall appear in the office of J. W. Thompson, Justice of the Peace, of Clark Township on the 24th day of its Oct. term, 1911, to answer to said charge, and shall at all times render his self amenable to the order and process of said court in the prosecution of said charge, and if convicted shall render his self in execution thereof or if he fails to perform either of these conditions, that we will pay the State of Arkansas the sum of \$500 Dollars.

P. L. ROGERS. [SEAL.]
W. O. LANE. [SEAL.]

7

Affidavit for Appeal.

In the Justice Court of Clark Township, Greene County, Arkansas.

Before J. W. Thompson, J. P.

STATE OF ARKANSAS, Plaintiff,

VS.

P. L. ROGERS, Defendant.

Affidavit for Appeal.

Comes P. L. Rogers, and represents to the Court that he is aggrieved by the judgment rendered herein against him in favor of the plaintiff, State of Arkansas, and prays an appeal therefrom to the circuit court.

P. L. ROGERS.

P. L. Rogers states on oath that the appeal in this cause is not taken for the purpose of delay, but that justice may be done.

P. L. ROGERS.

Subscribed and sworn to before me, this 27th day of October, 1911.

J. W. THOMPSON, J. P.

8

Appeal Bond to Circuit Court.

In the Justice Court, Clark Township, Greene County, Ark.

Before J. W. Thompson, Justice of the Peace.

STATE OF ARKANSAS, Plaintiff,

VS.

P. L. ROGERS, Defendant.

The defendant, P. L. Rogers, having appealed from a judgment rendered against him by J. W. Thompson, Justice of the Peace of Clark Township, Greene County, on the 27th day of October, for

a fine of Two Hundred Dollars and costs, upon a charge of misdemeanor in selling vehicles without license, as provided for by Act No. 97, Acts of 1909 of Arkansas:

Now, therefore, We acknowledge ourselves indebted to the State of Arkansas in the sum of Two Hundred and Fifty Dollars, conditioned that the defendant P. L. Rogers shall appear in the Greene Circuit Court at the next December 1911 term, and submit himself to the jurisdiction thereof, and not depart therefrom without leave of said court.

Given under our hands this 27th day of October, 1911.

P. L. ROGERS.

W. O. LANE.

"Filed October 30th, 1911."

J. P. CATHEY,

Circuit Clerk.

9

Bill of Exceptions.

In the Greene Circuit Court, Second Division, December Term, 1911.

STATE OF ARKANSAS, Plaintiff,

VS.

P. L. ROGERS, Defendant.

Bill of Exceptions.

5

Be it remembered, That on the 4th day of December, 1911, a regular day of the March term of the Greene Circuit Court, Second Division, this cause came on for hearing before the Honorable W. J. Driver, Circuit Judge presiding, and a jury having been waived, the following proceedings were had to wit: the case was submitted on the following agreed statement of facts:

10

Agreed Statement of Facts.

Greene Circuit Court, 2nd Division.

STATE OF ARKANSAS, Plaintiff,

VS.

P. L. ROGERS, Defendant.

Agreed Statement of Facts.

It is agreed that this case may be submitted to the court upon the following agreed statement of facts:

The Spaulding Manufacturing Company is a copartnership composed of H. W. Spaulding, F. E. Spaulding and E. H. Spaulding,

all of whom are citizens and residents of Grinnell, Iowa, at which place is located the general office of the company and the factory in which are manufactured the vehicles and wagons which they sell through traveling salesmen throughout Arkansas and other states in the Union. They have no factory at any other place than Grinnell, Iowa, and no regular place of business or branch house in the State of Arkansas. The manner in which the Spaulding Manufacturing Company has been a long time prior to, and at the time of this alleged offense, doing business in this State, is as follows:

The company has and maintains at Memphis, Tenn., in carload lots stored in a wareroom, carriages, buggies and vehicles of different grades and kinds manufactured by them, which is in charge of an agent of this company. It also has a division superintendent or manager by the name of Will Warren, in charge of its salesmen in Greene County, Arkansas, and other counties in Arkansas. It also has in its employ a certain number of salesmen who travel over and through the county or counties in this State assigned to them,

going from place to place taking orders and making contracts for the sale of vehicles, and among them is the defendant Rogers, a part of whose territory assigned to him by the Company being Greene County, Arkansas. Within the last twelve months and only recently the defendant, Rogers has been traveling over and through Greene County, going from place to place therein, soliciting orders and taking orders and notes for buggies from residents of said county. Each salesman is furnished with one or more sample buggies, with which he travels over and through the county assigned to him, soliciting orders. In no case does the salesman sell the sample, and no sample has been sold or delivered by said defendant Rogers nor does he solicit orders for the sale of such samples. Upon giving an order for a vehicle, the purchaser signs a note or memorandum of purchase, a blank form and copy of which is hereto attached, marked "Exhibit A," stipulating for the delivery of said vehicle within a certain number of days, usually thirty. The purchaser also delivers to the salesman at the time the order is made his note for the purchase price of such buggy or vehicle. A copy of said form of note is hereto attached as "Exhibit B" to this agreed statement of facts, both of which exhibits are hereby made a part hereof. All orders are transmitted by the salesmen to their respective division superintendents, in this instance the orders obtained by Rogers being transmitted by him to the said Warren. It is then the duty of the division superintendent to pass upon the financial responsibility of those giving the orders. If said orders are by the said Warren approved, he then directs the representative of the company at Memphis to make delivery on the same. The delivery is then made as follows:

The vehicles designated in the orders are selected by the company's agent in charge from the stock on hand according to the respective styles mentioned in the contracts, and in sufficient numbers according to the styles sold as shown by the order, to supply those contracted for in any given community at any one interval and are placed on board a car at

Memphis, the wheels and shaft being first taken off of the body of the vehicle. The body of the vehicle is tagged with the name of the respective purchaser, the wheels or shaft bearing no tag or name of the purchaser, being also loaded into the same car and being capable of identification with the body of which they are a part by reason of the fact that they are suited for and a part of the buggy mentioned in the contract of purchase. The shipment is consigned to the order of the Spaulding Manufacturing Company, at a place near where the vehicles are to be delivered,—in this instance at Jonesboro, Craighead County, Arkansas. A representative of the Spaulding Manufacturing Company, called a delivery man, receives from the Railroad Company at Jonesboro the vehicles there consigned to his order. No storage house is maintained at that point, the method of business being to unload the vehicles, to attach to the body of the vehicle the wheels and shafts belonging and of the grade and kind sold, which requires only a few moments to the vehicle. The vehicles are then delivered directly by the company's deliveryman to their respective purchasers. The deliveryman is usually a different person from the salesman taking the order.

In accordance with this method and character of doing business P. L. Rodgers, the defendant, as an agent of the company, on the — days of September, 1911, traveled over and through Greene County, Arkansas, from place to place and took orders from Wm. Ridge, Mrs. Harris and C. Hooker in Greene County, Arkansas, for vehicles, having each of these to sign the usual order and note in manner and form as above described, which said order was approved by the proper agent of the Spaulding Manufacturing Company. The vehicles have been delivered on said orders.

The above is a statement of the course of business pursued by the defendant, Rogers, in his employment as a traveling salesman of the Spaulding Manufacturing Company before and at the time of his arrest herein. It is further agreed that no vehicle or buggies excepting the sample herein mentioned, are brought or sent into the State of Arkansas or stored therein by the Spaulding Manufacturing Company or any of its agents, except for the purpose of delivery upon orders previously taken for them as above described, and that no vehicle or wagons are so sold by said company or its agents, except upon an order taken for said vehicle or wagon prior to the time it is brought into the State of Arkansas.

It is further agreed that neither the Spaulding Manufacturing Company, P. L. Rogers nor any other salesman or deliveryman, either for themselves or for the Spaulding Manufacturing Company, engaged in the taking of orders and the delivery of vehicles have paid the license tax provided for by Act No. 97, approved April 1, 1909.

JEFF BRATTON,

Attorney for State.

MOORE, SMITH & MOORE,

Attorneys for Defendant.

(Here follows reproduction of Exhibit A and Exhibit B, marked page 14.)

Taken by.....

Salesman

For 90-10-21-11-5M

Postoffice.....
Co. of..... State of.....
Lives..... Miles North..... Lives..... Miles East.....
Lives..... Miles South..... Lives..... Miles West.....

Comp. No..... \$..... Due.....
Notes No..... \$..... Due.....

\$..... 191.....
On or before the..... day of....., 191....., for value received,
I promise to pay to SPAULDING MFG. CO., or order, at Grinnell, Iowa
Dollars

WITH EXCHANGE AND COLLECTION CHARGES

with interest at 8 per cent per annum, from date until due and at the rate of 10 per cent after due, and a reasonable attorney's fee if placed with attorney for collection or suit. If this note is not paid when due, companion Note or Notes of even date herewith shall become immediately due and payable.

This Note

is given for one SPAULDING MFG. CO.'S vehicle No.....

for which

I have this day given them an order and this note is to be void only upon the condition that SPAULDING MFG. CO. refuse to deliver said vehicle in my own name..... Acres of Land, in the County of..... State of.....

which at a fair valuation is worth \$..... I also own \$..... on which there are no encumbrances except..... for

all exemptions and debts. There is no judgment against me. I make this statement at time of signing this Note for the purpose of obtaining credit, and it is understood that the ownership of the vehicle for which this note is given shall remain from SPAULDING MFG. CO., until fully paid for. No salesman has authority to make any agreement not upon the face of this Note when made.

Due.....

Witness.....

S. M. Co.'s No.....

Send For Coll.....

Write obscure names at end of

Exhibit "A"

MEMORANDUM OF AGREEMENT
WITH SPaulding MFG. CO., of GRIMMEL, Iowa

Having examined and tested to my satisfaction samples of your line of Vehicles, I hereby purchase from you, subject to your approval on the terms herein mentioned, one of your 191

with Top, with (One or Two) seat
(Full Leather or Union) (Pole or Shirts) known as Catalogue No. (End or Side Spring Buggy, Carriage or Spring Wagon)
to be delivered at

after as transportation will permit. This Memorandum is also a receipt for my note within 30 days from date of this Order, or as soon
8% from date of delivery, given as follows: of even date herewith, with interest at

Note for \$ due 191
Note for \$ due 191 }
This MEMORANDUM contains all Agreements made with your Salesman. This Sale and Order are not subject to change or countermand.

Witness Signed
Salesman

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Finding of Fact.

This was all the evidence introduced by either party in the case. Thereupon, the defendant asked the court to find the facts as follows:

Finding of Fact.

1. The court finds that the defendant was engaged as agent of the Spaulding Manufacturing Company in taking orders for articles of commerce moving between the States of Tennessee and Arkansas, and that the character of the vehicles, as articles of commerce between the States, was not changed from the time the orders were taken to the time of delivery to the purchaser.

The Court refused to give said finding of facts requested by the defendant, to which refusal the defendant at the time excepted and had his exceptions noted of record.

Declarations of Law.

Whereupon the defendant asked the court to declare the law as follows:

1. That Act No. 97 of the Legislature of Arkansas, approved April 1, 1909, as applied to the business conducted by the defendant for the Spaulding Manufacturing Company as their agent, is in violation of Section 8 Article 1 of the Constitution of the United States, and in so far as it does apply is void.

2. That the said Act No. 97 denies to citizens of other States all the privileges and immunities granted to citizens of Arkansas, and is void because violative of Section 2, Article 4 of the Constitution of the United States.

3. That the said Act No. 97 denies to persons within its jurisdiction the equal protection of the laws, and is void because violative of the Fourteenth Amendment to the Constitution of the United States, and of Section 18, Article 2 of the Constitution of Arkansas.

4. That the tax or fee imposed by the said Act No. 97 upon each and every person engaged in each county in the State in the sale of the articles enumerated in the Act as a privilege of selling said articles is excessive, and if considered as an Act for the purpose of licensing and taxing for regulation is void on its face.

5. That said Act No. 97 was designed to regulate peddling, and that the business as conducted by the Spaulding Manufacturing Company, through its salesmen, of which the defendant is one, is not peddling, and the defendant has not committed an offense.

The court refused to give each and every one of the above declarations of law, numbered 1, 2, 3, 4 and 5 respectively, which were separately requested by the defendant, and the defendant at the time severally and separately excepted to the refusal of the court to give each of the said declarations of law and had its exceptions

severally and separately noted of record to the refusal of the court to give each of the said declarations of law.

17 And the Court, of its own motion, found the facts as set forth in the agreed statement of facts, and upon the same found the defendant guilty and imposed a fine of \$200, to which judgment of the court the defendant at the time excepted and had his exceptions noted of record.

On the same day the defendant filed his motion for new trial, which is as follows:

18

Motion for New Trial.

Comes the defendant and moves the court to grant him a new trial herein, and for cause says:

First, the court erred in refusing to find the facts as requested by the defendant as follows:

"The court finds that the defendant was engaged as agent of the Spaulding Manufacturing Company in taking orders for articles of commerce moving between the States of Tennessee and Arkansas, and that the character of the vehicles as articles of commerce between the states was not changed from the time the orders were taken to the time of delivery to the purchasers."

Second, the court erred in refusing declaration of law No. 1 requested by the defendant.

Third, the court erred in refusing declaration of law No. 2 as requested by the defendant.

Fourth, the court erred in refusing declaration of law No. 3 asked by the defendant.

Fifth, the court erred in refusing declaration of law No. 4 as requested by the defendant.

Sixth, the court erred in refusing declaration of law No. 5 as requested by defendant.

Seventh, the judgment of the court is not sustained by the evidence as set out in the agreed statement of facts.

Eighth, the judgment of the court is contrary to the law.

Ninth, the judgment of the court is contrary to the law and the evidence.

Wherefore, defendant prays for a new trial and all other and proper relief.

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And the said motion having been heard by and submitted to the court, was by the court overruled, to which ruling of the court the defendant at the time excepted and had his exceptions noted of record, and prayed an appeal to the Supreme Court, which was granted, and the defendant was given twenty days in which to file his bill of exceptions.

Wherefore, Defendant now presents this, his bill of exceptions, and asks that the same be signed by the judge in order that it may be filed and made a part of the records in this cause, which is accordingly done, this the 4th day of December, 1911.

W. J. DRIVER,

*Circuit Judge of the Greene Circuit
Court, Second Division.*

20

Judgment.

Criminal Court Record, Second Day December Term, 1911, December 5, 1911.

No. 734.

STATE OF ARKANSAS, Plaintiff,

VS.

P. L. ROGERS, Defendant.

Judgment.

Now on this day comes the State of Arkansas by its attorney; comes also the defendant, P. L. Rogers by his attorney, and on motion by consent of both parties a jury is waived and this cause submitted to the court sitting as a jury upon the agreed statement of facts herein filed. And the case being submitted upon the said agreed statement of facts the court doth find the facts as set out therein. The court further finds the defendant guilty as charged herein and fixes his punishment at a fine of Two Hundred Dollars.

It is therefore ordered, considered and adjudged by the court that the State of Arkansas have and recover of and from the defendant, P. L. Rogers, the sum of Two Hundred Dollars fine, together with all costs herein expended, to which fine and judgment of the court the defendant excepts and asked that his exceptions be noted of record which is accordingly done. Whereupon, defendant on this day, by his attorney files his motion for a new trial in this cause, which motion is argued before and submitted to the court, and which is by the court overruled; to which ruling of the court defendant at the time excepts and asks that his exceptions be noted of record which is accordingly done; and the defendant prays an appeal to the Supreme Court of Arkansas, which appeal is by the court granted; and it is ordered by the court that the defendant be allowed twenty days in which to file his bill of exceptions herein.

21 It is further ordered by the court that the defendant be permitted to enter into bond in the sum of \$500 Dollars pending said appeal.

Record 6, page 516.

Appeal Bond.

Greene Circuit Court, Second Division.

STATE OF ARKANSAS, Plaintiff,

vs.

P. L. ROGERS, Defendant.

Appeal Bond.

The defendant, P. L. Rogers, having prayed and been granted an appeal to the Supreme Court, from the judgment of the Greene Circuit Court, Second Division, rendered herein against him at its December term, 1911, for a fine of \$250.00 *Dollars* and costs, and being permitted to give bond in the sum of \$500.00 *Dollars*: now we covenant to and with the plaintiff, the State of Arkansas, that said defendant, upon a final termination of his appeal, will appear and surrender himself in the Greene Circuit Court; or if he fails to do so, that we will pay to the said plaintiff the said sum of \$500.00 *Dollars*.

Witness our hands and seals the 5th day of December, 1911.

P. L. ROGERS.

PARAGOULD TRUST CO., [SEAL.]

By A. BERTIG, *Vice Pres't.*

H. W. TRIEBER.

"Filed Dec. 5, 1911."

J. P. CATHEY, *Clerk.**Fee Bill.*

No. 734.

STATE OF ARKANSAS

vs.

P. L. ROGERS.

Cost Bill.

J. W. Thompson, J. P.....	\$3.80
R. F. Clark, Constable.....	3.40
Jeff. Bratton, Deputy Pros. Atty.....	10.00
J. P. Cathey, Clerk.....	2.90
J. E. Lawson, Sheriff.....	.30
T. H. Caraway, Pros. Atty.....	10.00
Fine	200.00
Conviction Tax.....	3.00
J. P. Cathey, Transcript.....	5.75

Certificate.

STATE OF ARKANSAS,

County of Greene:

I, J. P. Cathey, Clerk of the Circuit Court within and for the county and state aforesaid do hereby certify that the annexed and foregoing 21 pages of typewritten matter contains a true and perfect transcript of the files and record entries in the case of State of Arkansas vs. P. L. Rogers, as shown by the records and files in this office.

Witness my hand and seal of said court this January 3, 1912.

[SEAL.]

J. P. CATHEY, *Clerk.*

24

Filing in Supreme Court.

Endorsement on back of Transcript: No. 1816. P. L. Rogers, Appellant, vs. The State of Arkansas, Appellee. Greene—W. J. Driver, J. Transcript. Filed January 5, 1912. P. D. English, Clerk, by W. P. Sadler, D. C.

25

Record Entries.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held at the Court House in the City of Little Rock, on the 27th day, being the fourth Monday of November, A. D. 1911, the following proceedings were had, to wit:

On January 15th, 1912.

P. L. ROGERS, Appellant,

vs.

THE STATE OF ARKANSAS, Appellee.

Appeal from Greene Circuit Court.

and

L. P. BARNHILL, Appellant,

vs.

THE STATE OF ARKANSAS, Appellee.

Appeal from Greene Circuit Court.

On motion and for cause shown, the appellants in the two causes above last named, are by the Court permitted to abtract and brief the said causes together.

On January 29th, 1912.

Causes submitted:

The following causes being regularly called, come the parties thereto by their attorneys and solicitors, and said causes are submitted upon the transcripts of the records and the briefs filed, and are by the Court severally taken under advisement, viz:

1646.

P. L. ROGERS

v.

THE STATE OF ARKANSAS.

1647.

L. P. BARNHILL

v.

THE STATE OF ARKANSAS.

26

Judgment.

On February 12th, 1912.

1648.

P. L. ROGERS, Appellant,

v.

THE STATE OF ARKANSAS, Appellee.

Appeal from Greene Circuit Court.

This cause came on to be heard upon the transcript of the record of the circuit court of Greene County, and was argued by counsel, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the Court that the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things, affirmed with costs, and that unless said appellant shall within fifteen juridical days, surrender himself to the proper authority in execution of said judgment, his bond be declared as forfeited.

It is further considered that said appellee recover of said appellant all her costs in this Court in this cause expended, and have execution thereof.

Statement of Case.

In the Supreme Court of Arkansas, February 12, 1912.

No. 166.

ROGERS and BARNHILL

v.

STATE.

Statement by the Court.

These are two appeals prosecuted by the two defendants from judgments of conviction had upon separate trials. The facts and questions involved in the two cases are the same, and for that reason the appeals are considered together. The prosecutions were instituted before a justice of the peace upon separate informations charging the defendants with a violation of the peddling statute approved April 1st, 1909, which provides that "Before any person, either as owner, manufacturer or agent, shall travel over and through any county and peddle and sell any lightning rod, steel stove range, clock, pump, buggy, carriage or other vehicle, or either of said articles, he shall procure a license," etc. Acts, 1909, p. 292. The trials before the justice of the peace and in the circuit court, to which appeals had been taken, resulted in the conviction of the defendants. The cases were heard upon an agreed statement of facts, which is as follows:

"The Spaulding Manufacturing Company is a copartnership composed of H. W. Spaulding, F. E. Spaulding and E. H. Spaulding, all of whom are citizens and residents of Grinnell, Iowa, at which place is located the general office of the company and the factory, in which are manufactured the vehicles and wagons which they sell through traveling salesmen throughout Arkansas and other states in the Union. They have no factory at any other place than Grinnell, Iowa, and no regular place of business or branch house in the State of Arkansas. The manner in which the Spaulding Manufacturing Company had been a long time prior to and at the time of this alleged offense, doing business in this State, is as follows:

The company has, and maintains, at Memphis, Tennessee, in car-load lots stored in a wareroom, carriages, buggies and vehicles of different grades and kinds manufactured by them, which are in charge of an agent of the company. It also has a division superintendent, or manager, by the name of Will Warren, in charge of its salesmen in Greene County, Arkansas, and other counties in Arkansas. It also has in its employ a certain number of salesmen who travel over and through the counties in this State assigned to them going from place to place, taking orders and making contracts for the sale of vehicles, and among them is the defendant, Rogers, a part of whose territory assigned to him by the company being Greene County, Arkansas. Within the last 12 months

and only recently, the defendant, Rogers, has been travelling over and through Greene County, going from place to place therein, soliciting and taking orders and notes for buggies from residents of said county. Each salesman is furnished with one or more sample buggies, with which he travels over and through the county assigned to him, soliciting orders. In no case does the salesman sell the sample, and no sample has been sold or delivered by said defendant Rogers, nor does he solicit orders for the sale of such samples. Upon giving an order for a vehicle, the purchaser signs a note or memorandum of purchase, a blank form and copy of which is hereto attached, marked exhibit "A," stipulating for the delivery of said vehicle within a certain number of days, usually 30. The purchaser also delivers to the salesman at the time the order is made, his note for the purchase price of such buggy or vehicle. A copy of said form of note is hereto attached as exhibit "B" to this agreed statement of facts, both of which exhibits are hereby made a part hereof. All orders are transmitted by the salesmen to their respective division superintendents, in this instance, the orders obtained by Rogers being transmitted by him to the said Warren. It is then the duty of the division superintendent to pass upon the financial responsibility of those giving the orders. If the said orders are by the said Warren approved, he then directs the representative of the company at Memphis, to make delivery on the same. The delivery is made as follows:

29 The vehicles designated in the orders are selected by the company's agent in charge from the stock on hand according to the respective style mentioned in the contracts, and in sufficient numbers according to the styles sold, as shown by the orders, to supply those contracted for in any given community at any one interval, and are placed on board a car at Memphis, the wheels and shafts being first taken off of the body of the vehicle. The body of the vehicle is tagged with the name of its respective purchaser, the wheels or shaft bearing no tag or name of the purchaser, being also loaded into the same car, and capable of identification with the body of which they are a part, by reason of the fact that they are suited for and a part of the buggy mentioned in the contract of purchase. The shipment is consigned to the order of the Spaulding Manufacturing Company at a place near where the vehicles are to be delivered, in this instance, at Jonesboro, Craighead County, Arkansas. A representative of the Spaulding Manufacturing Company, called a deliveryman, receives from the railroad company at Jonesboro, the vehicles there consigned to his order. No storehouse is maintained at that point, the method of business being to unload the vehicles, to attach to the body of each vehicle the wheels and the shafts belonging to, and of the grade and kind sold, which requires only a few moments to the vehicle. The vehicles are then delivered directly by the company's deliveryman to their respective purchasers. The deliveryman is usually a different person from the salesman taking the order.

In accordance with this method and character of doing business, P. L. Rogers, the defendant, as an agent of the company on the

days of September, 1911, travelled over and through Greene County, Arkansas, from place to place, and took orders from Wm. Hodge, Mrs. Harris, and C. Hooker, in Greene County, Arkansas, having each of these to sign the usual order and note in manner and form as above described, which said orders were approved by the proper agent of the Spaulding Manufacturing Company. The vehicles have been delivered on said orders."

It was further agreed that no vehicle except the samples above mentioned were brought into the state or stored therein except for the purpose of delivery upon orders previously taken, and that no vehicle was sold except upon such order taken for the vehicle prior to the time it was brought into the state. It was further agreed that neither of the defendants nor their employer, had taken out the license prescribed by the act.

Opinion.

FRAUENTHAL, J. (after stating the facts):

The facts of these cases are identical in every essential particular, except one, with the facts of the case of *Crenshaw v. State*, 95 Ark. 164, in which a prosecution for the violation of this statute was considered and a conviction thereunder sustained. The particular in which these cases apparently differ from the *Crenshaw* case is that in the case at bar the vehicles were separately tagged with the names of the respective purchasers at the time they were placed on board the cars at Memphis, Tennessee. The vehicles, however, were loaded and transported in one shipment and consigned to the Spaulding Manufacturing Co. at Jonesboro, where they were unloaded and thereafter delivered to the purchasers who, only after inspection and acceptance, received them. In the *Crenshaw* case, the ranges were not tagged or noted with the names of the purchasers at the time they were delivered to the common carrier at St. Louis.

We do not think that the tagging of the vehicles with the names of the persons executing orders therefor under the facts adduced in these cases, distinguishes them from the *Crenshaw* case in any particular that would declare the evidence in these cases lacking in any ingredient essential to constitute a violation of this statute, or that it would make the shipment a subject matter of interstate commerce any more than the shipment involved in the *Crenshaw* case. The gist of the offense created by this statute does not consist in making sales without license but in peddling without license. As is held in the case of *Crenshaw v. State*, supra, in order to constitute peddling there must be the element of travelling from place to place, over and through the county, for the purpose of making sales. The statute does not declare it an offense to make sales, nor does it seek to impose a license fee or tax on sales, but only makes it an offense for one to go about from place to place, from residence to residence, in and through the county in the prosecution of a wayfaring business, without procuring license, whether in making sales or in taking orders. As was said relative to a statute quite

similar to this by the Supreme Court of the United States, "Its object in requiring peddlers to take out and pay for licenses and to exhibit their licenses on demand to any peace officer or to any citizen householder of the county, appears to have been to protect the citizens of the State against the cheats and frauds and even thefts which, as the experience of ages has shown, are likely to attend itinerant and irresponsible peddling from place to place and from door to door." *Emert v. Missouri*, 156 U. S. 296. This statute is directed at an itinerant occupation which may endanger the peace and safety of the citizens of the state and not at a business which only involves the sale of property. It is but the exercise of the police power of the state and, as was said in the above case of *Emert v. Missouri*, supra, "it is nowise repugnant to the power of Congress to regulate commerce among the several states but is a valid exercise of the power of the state over persons in business within its borders."

The question as to the place at which the sale was made and at which the title to the property passed is not essentially different in these cases from that involved in the *Crenshaw* case; because in these cases it was provided in the orders given by the prospective purchasers of the vehicles that they were purchased in effect upon condition that when the vehicles were delivered to them in Greene county they should be approved by them after an inspection and acceptance thereof. So that the sales were not really consummated until the purchasers actually had inspected and accepted the vehicles in Greene County. The mere fact that the vehicles were
32 tagged in the names of the prospective purchasers when the shipment was made at Memphis did not change the character of the act committed by these defendants, which consisted in going from house to house and residence to residence throughout the county in taking the orders and, thus, in peddling. It is true that in the case of *Crenshaw v. State*, supra, the case of *Rearick v. Pa.*, 203 U. S. 507, is referred to, and this court stated that the facts in that case differed from the *Crenshaw* case in that the ranges in the *Crenshaw* case were not tagged with the names of the purchasers. But the court did not base its opinion in that case upon the ground that the ranges were not tagged in the names of the purchasers or that the *Rearick* case was decisive in event the ranges had been so tagged. It based its decision upon the ground that the act of peddling prohibited by this statute without license consisted in going about from place to place, over and through the county, for the purpose of making sales; that the statute regulating such acts was but the exercise of the police power of the state in protecting its citizens; that it in nowise affected interstate commerce or any business or thing which was the subject matter of interstate commerce. We are of the opinion that the facts in the cases at bar are, in every essential particular, analogous to those in the *Crenshaw* case. In the *Crenshaw* case the constitutionality of this peddling statute, under similar facts and conditions, was upheld and we see no reason for changing that decision.

It has been held by the Supreme Court of the United States that state statutes requiring that notes otherwise negotiable instruments,

the consideration for which is a patent right or patented article, should be executed in a prescribed manner or otherwise be invalid as negotiable paper or even void, are not in contravention of any provision of the Federal Constitution or of any power given to Congress to legislate relative to the subject matter of such transactions. This ruling is based upon the ground that such state legislation is but the exercise of the police power of the State in the protection of its citizens against fraud and imposition which common experience has shown can be more readily perpetrated in cases where the sale of patent rights and patented articles is the subject matter of the transaction. *Allen v. Riley*, 203 U. S. 347; *Woods v. Carl*, 203 U. S. 358; *Ozan Lumber Co. v. Union Co. Bank*, 207 U. S. 251.

In the latter case it is said: "The various itinerant venders of patented articles, whose fluency of speech and carelessness regarding the truth of their representations might almost be said to have become proverbial, were of course in the mind of the legislature and were included in this legislation. Indeed they are the principal people to be affected by it."

In the latter case the transaction involved a contract of sale concerning a matter which was the subject of interstate commerce and while the question as to whether or not such state legislation relative to patent notes was affected by reason of the fact that the patented article sold was shipped in interstate commerce was not expressly passed on in the opinion rendered by the Federal Supreme Court, it does appear to have met the attention of the United States Circuit Court of Appeals in that case and is there noted. *Union Co. Bank v. Ozan Lumber Co.*, 179 Fed., 710. But in those cases this character of legislation is recognized as a valid police regulation enacted by the State for the peace and security of its citizens. The peddling statute of this State we think is that character of legislation and is for that reason valid.

The judgments are accordingly affirmed.

Wood, J., dissents.

34

Clerk's Certificate.

SUPREME COURT,

State of Arkansas, ss:

I, Peyton D. English, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of P. L. Rogers, Appellant, vs. The State of Arkansas, Appellee, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this March 8, 1912.

[Seal of the Supreme Court of Arkansas.]

P. D. ENGLISH,

Clerk Supreme Court of Arkansas.

Assignment of Errors, etc.

Supreme Court of Arkansas.

No. 1646.

P. L. ROGERS, Appellant,

VS.

STATE OF ARKANSAS, Appellee.

Assignment of Errors and Prayer for Reversal.

Now comes the above appellant and files herewith his petition for a writ of error and says that there are errors in the records and proceedings in the above entitled case, and for the purpose of having the same reviewed in the United States Supreme Court makes the following assignment:

The Supreme Court of Arkansas erred in holding that a certain Act of the General Assembly of the State of Arkansas, known as Act No. 97 of the Acts of 1909 of the General Assembly of Arkansas, approved April 1, 1909 (Laws of 1909, page 292), was constitutional and valid. The validity of said Act was denied and drawn in question by appellant on the ground of its being repugnant to the Constitution of the United States, and in contravention thereof. The said errors are more particularly set forth as follows:

The Supreme Court of Arkansas erred in holding and deciding:

First, that said Act was not void as applied to the business conducted by the appellant as being a regulation of interstate commerce in contravention of Article 1, Section 8, of the Constitution of the United States.

Second, that said Act does not abridge the privileges and immunities of the citizens of the several states in contravention of Article 4, section 2, of the Constitution of the United States.

Third, that said Act does not deny to appellant and other persons within its jurisdiction the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

36 Fourth, that said Act does not deprive citizens of life, liberty or property, without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

For which errors the appellant, P. L. Rogers, prays that the said judgment of the Supreme Court of the State of Arkansas, dated February 12, 1912, be reversed, and a judgment rendered in favor of the appellant, and for costs.

ARTHUR C. LYON,
MOORE, SMITH & MOORE,
Attorneys for Appellant.

Filed March 7, 1912.

P. D. ENGLISH,

Clerk Sup. Court.

Petition for Writ of Error.

Supreme Court of Arkansas.

No. 1646.

P. L. ROGERS, Appellant,

VS.

STATE OF ARKANSAS, Appellee.

Petition for Writ of Error.

Considering himself aggrieved by the final decision of the Supreme Court in rendering judgment against him in the above entitled case, the appellant hereby prays a writ of error from the said decision and judgment to the United States Supreme Court, and an order fixing the amount of a supersedeas bond.

Assignment of errors herewith.

ARTHUR C. LYON,
MOORE, SMITH & MOORE,
Attorneys for Appellant.

STATE OF ARKANSAS,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by P. L. Rogers to the State of Arkansas, in the sum of \$500.00, such bond, when approved, to act as a supersedeas.

Dated March 7, 1912.

EDGAR A. McCULLOCH,
Chief Justice Supreme Court of Arkansas.

Filed March 7, 1912.

P. D. ENGLISH,
Clerk Sup. Court.

38

Bond.

Copy.

P. L. ROGERS, Plaintiff in Error,

VS.

STATE OF ARKANSAS, Defendant in Error.

Bond.

Know all men by these presents:

That we, P. L. Rogers, as principal, and The United States Fidelity and Guaranty Company, as sureties, are held and firmly bound unto the State of Arkansas in the sum of Five Hundred Dollars, to be paid to the said State, to which payment well and

truly to be made we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals and dated this 7th day of March, 1912.

Whereas, The above named plaintiff in error seeks to prosecute his writ of error to the United States Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Arkansas;

Now, therefore, The condition of this obligation is such, that if the above named plaintiff in error shall prosecute his said writ of error to effect, and answer all costs and damages that may be adjudged if he shall fail to make good his plea, then this obligation to be void, otherwise to remain in full force and effect.

[SEAL.]

P. L. ROGERS.

THE UNITED STATES FIDELITY &
GUARANTY CO.,

By C. P. PERRIE,

J. F. LOUGHBOROUGH,

Attorneys in Fact.

Bond approved and to operate as a supersedeas.

Dated March 7, 1912.

EDGAR A. McCULLOCH,

Chief Justice Supreme Court of Arkansas.

Filed March 7, 1912.

P. D. ENGLISH,

Clerk Sup. Ct.

39

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between P. L. Rogers and the State of Arkansas, wherein was drawn in question the validity of a statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath hap-

opened, to the great damage of the said P. L. Rogers, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days

40 [Omission in copy.—PRINTER.]

ings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglas White, Chief Justice of the United States, the 7 day of March, in the year of our Lord one thousand nine hundred and twelve.

[The Seal of the District Court of the U. S., Western Division, East. Dist. Ark.]

SID B. REDDING,
Clerk District Court of the United States
for the Eastern District of Arkansas,
By W. P. FEILD, JR., D. C.

Allowed March 7, 1912.

EDGAR A. McCULLOCH,
Chief Justice Supreme Court of Arkansas.

Filed March 7, 1912.

P. D. ENGLISH,
Clerk Sup. Court.

41 *Statement.*

SUPREME COURT,
State of Arkansas, ss:

I, Peyton D. English, clerk of the said court, do hereby certify that there was lodged with me as such clerk on March 7th, 1912, in the matter of P. L. Rogers, versus The State of Arkansas,

1. The original bond of which a copy is herein set forth.
2. Two copies of the writ of error, as herein set forth,—one for each defendant, and one to file in my office.
3. Two copies of the assignment of errors and prayer for reversal.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this March 8, 1912.

[Seal of the Supreme Court of Arkansas.]

P. D. ENGLISH,
Clerk Supreme Court of Arkansas.

Citation.

THE UNITED STATES OF AMERICA:

The President of the United States to the State of Arkansas, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Arkansas, wherein P. L. Rogers is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Arkansas this 7 day of March, 1912.

EDGAR A. McCULLOCH,

Chief Justice Supreme Court of Arkansas.

Attest:

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,

Clerk of the Supreme Court of Arkansas.

LITTLE ROCK, ARK., March 7th, 1912.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

HAL L. NORWOOD,

Attorney General.

Filed March 7, 1912.

P. D. ENGLISH,

Clerk Sup. Court.

Return to Writ.

UNITED STATES OF AMERICA,

Supreme Court of Arkansas:

In obedience to the commands of the within writ, I herewith transmit the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness Whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the City of Little Rock, this March 8, 1912.

[Seal of the Supreme Court of Arkansas.]

P. D. ENGLISH,

Clerk Supreme Court of Arkansas.

Costs of Suit.

Costs in Circuit Court.....	\$33.40
Costs in Supreme ".....	87.00
Making transcript for the Supreme Court of the United States	13.00

All costs paid by Plaintiff in Error.

[Seal of the Supreme Court of Arkansas.]

P. D. ENGLISH,
Clerk Sup. Court.

Endorsed on cover: File No. 23,092. Arkansas Supreme Court.
Term No. 576. P. L. Rogers, plaintiff in error, vs. The State of
Arkansas. Filed March 14th, 1912. File No. 23,092.